NELSON COUNTY *v.* COLEMAN.

Nov. 20, 1919.

[101 S. E. 413.]

1. Counties (§ 1*)—Political Subdivision.—Counties are political subdivisions of the state.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 641.]

2. Counties (§ 208*)—Suit in Tort.—A county cannot be sued in tort.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 690.]

Action (§ 28*)—Waiver of Tort and Suit in Assumpsit.—While a tort is committed which involves an injury to personal property, plaintiff may waive the tort and sue on an implied contract to pay for the property which has been wrongfully taken, damaged, or converted to defendant's use.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 641.]

4. Eminent Domain (§ 270*)—Implied Contract to Pay for Property Taken or Injured.—Though neither counties nor the state nor its governmental agencies can be sued in tort, one whose personal property has been wrongfully taken, damaged, or converted to the county's use may waive the tort and sue upon an implied contract to pay for such property.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig 114.]

5. Eminent Domain (§ 270*)—Recovery upon Implied Contract for Private Property Taken.—Owner whose land was taken by county without authority and converted to public use had the right to waive all of her other remedies for the protection of her private property, and to sue under Code 1904, §§ 825, 836, 838, as upon an implied contract to pay therefor such amount as would have been awarded if the property had been condemed under the eminent domain statutes; the constitutional provisions prohibiting the taking or damaging of private property without compensation being self-executing.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 114.]

6. Trial (§ 260 (10)*)—Refusal of Requests.—In action against county for damages sustained on unlawful taking of land which had not been condemned for road purposes, refusal to instruct jury not to consider fact that plaintiff received less for tobacco crops after the taking than before *held* sufficiently covered by instructions given.

7. Eminent Domain (§ 271*)—Damages of Owner for Land Wrongfully Taken by County.—Where land condenmed for road purposes was not used, but other land not condemed was taken, owner

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

was entitled to recover from county by the value of the land wrongfully taken in excess of amount already received by her, and to recover for any damages either to the crops or to the residue of the land which were directly consequential upon such wrongfully taking, including damages arising from washing the land subsequent to condemnation of the land not used.

[Ed Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 114.]

8. Eminent Domain (§ 305*)—Damages for Unlawful Taking of Land by County Not Excessive.—In action against county for unlawful taking of land for highway without having condemned land, and after having condemned other land not used, $300 verdict for plaintiff held not excessive.

Error to Circuit Court, Nelson County.

Proceedings by L. M. Coleman against Nelson County. Judgment for the former, and the latter brings error. Affirmed.

S. B. Whitehead, of Lovingston, for plaintiff in error.

L. Grafton Tucker, of Lovingston, for defendant in error.

CHESAPEAKE & O. RY. CO. *v.* ARRINGTON.

Nov. 20, 1919.

[101 S. E. 415.]

1. Master and Servant (§ 111 (1)*)—Automatic Couplings on Cars Required by Federal Safety Appliance Act.—The federal Safety Appliance Act (U. S. Comp. St. § 8605 et seq.) imposes an absolute and unqualified duty to provide devices which will couple automatically by impact without the necessity of men going between the cars.

2. Master and Servant (§ 240 (5)*)—Duty of Railroad Employee in Coupling Cars.—It is the duty of an interstate railroad employee to refrain from going between cars in making a coupling unless necessity therefor exists.

3. Evidence (§ 473*)—Admissibility of Conclusion under Collective Fact Rule.—In an action by a breakman injured while going between an engine and a car to make a coupling, there was no error in permitting plaintiff to state that there was a necessity for his going between the cars; such testimony being a conclusion drawn from alleged facts, sometimes called the collective fact rule.

[Ed. Note.—For other cases, see 16 Va.-W. Va. Enc. Dig. 540.]

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